

Applicants: Janaswamy Madhusudana Rao et al.
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REMARKS

Claims 1-12 are pending and under examination. Applicants have canceled claims 8 and 13-52 without disclaimer or prejudice. Applicants have amended claims 1-7 and 9-12 and added new claim 53. Support for amended claim 1 and new claim 53 may be found in the specification *inter alia* at page 4, lines 9-17. Claims 2-7 and 9-12 have been amended to correct certain misspellings. In addition, claim 5 has been amended to be an independent claim. Accordingly, claims 1-7 and 9-12 as amended and new claim 53 will be pending in the subject application upon entry of this Amendment.

In view of the arguments below, applicants maintain that the grounds of the Examiner's rejections have been overcome, and respectfully request that these grounds of rejection be withdrawn.

Election/Restriction

The Examiner indicates that applicants' election with traverse in a reply filed April 25, 2005 is acknowledged. The Examiner further states that the requirement is still deemed proper and is therefore made final. The Examiner also indicates that the search for the term "Cyclea pelata" in the patent and non-patent literature did not yield any result. Therefore, the Examiner indicated that the search was extended to other "optional" ingredients.

Information Disclosure Statement

The Examiner stated that the listing of references in the

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specification is not a proper information disclosure statement, and that unless cited by the Examiner, these references have not been considered. In response, applicants submit herewith an Information Disclosure Statement including Form PTO-1449 and copies of the documents listed.

Specifically, applicants direct the Examiner's attention to the following:

1. P.K. Warrier, Indian Medicinal Plants - A compendium of 500 species (1994-1996) Vol. 1, p. 218-219, published by orient Longman, Chennai (attached hereto as **Exhibit 1**);
2. P.K. Warrier, Indian Medicinal Plants - A compendium of 500 species (1994-1996) Vol. 3, pg. 86-87, published by orient Longman, Chennai (attached hereto as **Exhibit 2**);
3. P.K. Warrier, Indian Medicinal Plants - A compendium of 500 species (1994-1996) Vol. 3, pgs. 11-12, published by orient Longman, Chennai (attached hereto as **Exhibit 3**);
4. P.K. Warrier, Indian Medicinal Plants - A compendium of 500 species (1994-1996) Vol. 4, pg. 78, published by orient Longman, Chennai (attached hereto as **Exhibit 4**);
5. P.K. Warrier, Indian Medicinal Plants - A compendium of 500 species (1994-1996) Vol. 3, pg. 297-299, published by orient Longman, Chennai (attached hereto as **Exhibit 5**);
6. P.K. Warrier, Indian Medicinal Plants - A compendium of 500 species (1994-1996) Vol. 2, pg. 368-369, published by

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- orient Longman, Chennai (attached hereto as **Exhibit 6**);
7. P.K. Warrier in Indian Medicinal Plants - A compendium of 500 species (1994-1996) Vol. 2, pg. 184-185, published by orient Longman, Chennai (attached hereto as **Exhibit 7**);
8. P.K. Warrier, Indian Medicinal Plants - A compendium of 500 species (1994-1996) Vol. 2, pg. 277-278, published by orient Longman, Chennai (attached hereto as **Exhibit 8**);
9. P.K. Warrier, Indian Medicinal Plants - A compendium of 500 species (1994-1996) Vol. 3, pg. 13-16, published by orient Longman, Chennai (attached hereto as **Exhibit 9**);
10. K.M. Nadkarni, Indian Materia Medica (1976) Vol. 1, pgs. 74-76, published by Popular Prakashan Pvt. Ltd., Mumbai (attached hereto as **Exhibit 10**);
11. K.M. Nadkarni, Indian Materia Medica (1976) Vol. 1, pg. 582, published by Popular Prakashan Pvt. Ltd., Mumbai (attached hereto as **Exhibit 11**);
12. K.M. Nadkarni, Indian Materia Medica (1976) Vol. 1, pgs. 1027-28, published by Popular Prakashan Pvt. Ltd, Mumbai (attached hereto as **Exhibit 12**);
13. K.M. Nadkarni, Indian Materia Medica (1976) Vol. 1, pg. 531, published by Popular Prakashan Pvt. Ltd., Mumbai (attached hereto as **Exhibit 13**);
14. K.M. Nadkarni, Indian Materia Medica (1976) Vol. 1, pgs. 822-825, published by Popular Prakashan Pvt. Ltd., Mumbai

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(attached hereto as **Exhibit 14**);

15. K.M. Nadkarni, Indian Materia Medica (1976) Vol. 1, pgs. 1028-1030, published by Popular Prakashan Pvt. Ltd., Mumbai (attached hereto as **Exhibit 15**);
16. K.M. Nadkarni, Indian Materia Medica (1976) Vol. 1, pg. 478, published by Popular Prakashan Pvt. Ltd., Mumbai (attached hereto as **Exhibit 16**);
17. K.M. Nadkarni, Indian Mateira Medica (1976) Vol. 1, pgs. 381-82, published by Popular Prakashan Pvt. Ltd., Mumbai (attached hereto as **Exhibit 17**); and
18. K.M. Nadkarni in Indian Materia Medica (1976) Vol. 1, pg. 537, published by Popular Prakashan Pvt. Ltd., Mumbai (attached hereto as **Exhibit 18**).

Objection to the Abstract

The Examiner objected to the Abstract of the subject application because it contains the phrase "The present invention" in line 1 of the Abstract. In response, applicants note that the Abstract has been amended to replace the phrase "The present invention" with the phrase "This application provides...". In addition, the abstract has been amended to conform to the subject matter of claim 1 as amended herein.

Objection to the Claims

The Examiner objected to the claims pointing out certain misspellings throughout the claims and improper grammatical form.

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In response, claims 1-7 and 9-12 have been amended to correct misspellings and improper grammatical form.

Rejection Under 35 USC §112, Second Paragraph

The Examiner rejected claims 1-12 under 35 U.S.C. §112, second paragraph, as allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention.

The Examiner alleged that claim 1 is rendered vague and indefinite by the phrase "synergistical herbal composition" because it is unclear what amount of each claimed ingredient actually defines a synergistic amount. The Examiner further stated that the recitation of the proportions of the ingredients is required. The Examiner also alleged that claim 1 is rendered vague and indefinite by the phrase "said composition essentially comprising".

In response, but without conceding the correctness of the Examiner's ground of rejection, applicants note that claim 1 has been amended to recite "[a]n herbal composition for the treatment of gastric ulcer, *said composition comprising in essentially equal proportions*" (Emphasis added) to clearly describe the composition and the relative proportions of the ingredients therein. Accordingly, applicants maintain that this ground of the Examiner's rejection have been obviated.

The Examiner further alleged that claims 1-3, 7, 9 and 10 are vague and indefinite because of the misspellings of names of certain recited plants in the claims.

In response, applicants note that as stated above, claims 1-3, 7,

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9 and 10 have been amended to correct such misspellings. Accordingly, applicants maintain that this ground of the Examiner's rejection have been obviated.

The Examiner also alleged that claim 8 is rendered vague and indefinite by the term "elio" for which a definition cannot be found.

In response, applicants note that claim 8 has been canceled thereby rendering the Examiner's rejection moot.

In view of these remarks, applicants maintain that claims 1-7 and 9-12, as amended, satisfy the requirements of 35 U.S.C. §112, second paragraph.

Rejection Under 35 USC §103

The Examiner rejected claims 1 and 3-14 under 35 U.S.C. §103(a) as allegedly unpatentable over Goel et al. (U), Goel et al. (X), Hong-Yue (A), Dehpour et al. (V), Yoshida et al. (N), Johnson et al. (W), Blitz et al (U1), and Khrenova et al. (V). Specifically, the Examiner alleges that each of the cited prior art teaches a composition for the treatment of ulcers comprising an ingredient recited in claim 1. The Examiner acknowledges that none of the cited prior art teaches the combination of powdered plant parts recited in claim 1 but alleged that one skilled in the art would have been motivated to combine these ingredients to make a composition for treating ulcers. The Examiner further alleged that, absent an unexpected result in combining these ingredients in certain proportions, the claimed compositions would have been obvious to one skilled in the art.

In response, applicants respectfully traverse the Examiner's

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rejection.

Amended claim 1 recites powdered plant parts of *Asparagus racemosus*, *Glycyrrhiza glabra*, *Sesamum indicum*, *Musa sapientum* and *Trachyspermum roxburghianum* in essentially equal proportions and one or more pharmaceutically acceptable additives/carriers. The claimed composition exhibits unexpected effects in the treatment of ulcers when compared with any of the recited powdered plant parts alone or in other combinations tested. Applicants maintain that the higher potency for treating gastric ulcers exhibited by the claimed composition is an unexpected result of combining the above-listed powdered plant parts. Applicants respectfully point the Examiner's attention to the specification *inter alia* at page 12, Table 1, and page 13, lines 1-3, indicating that the claimed composition provides better protection as compared with the drug Omeprazole; at page 14, Table 3 and lines 14-16, indicating that the claimed composition also showed better protection using a different model; at page 16, Table 5 and lines 21-22, indicating that the claimed composition showed better protection under yet another model. Accordingly, applicants' claimed composition provides an unexpected result and therefore is unobvious and patentable. Accordingly, applicants request that the Examiner reconsider and withdraw the rejection under 35 U.S.C. §103.

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicants' undersigned attorney invites the Examiner to telephone him at the number provided below.

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No fee, other than the \$1,020.00 fee for a three-month extension of time and the \$180.00 fee for filing the Information Disclosure Statement incorporated herein, is deemed necessary in connection with the filing of this Amendment. However, if any other fee is required, authorization is hereby given to charge the amount of such fee to Deposit Account No. 03-3125.

Respectfully submitted,



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I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450	
 1130/06	Date
John P. White Reg. No. 28,678	